IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.361 OF 2006
IN
SUIT NO.802 OF 1981

The Cotton Corporation of India Ltd. ..Plaintiff.

V/s.

Niranjan Piramal Textiles Mills Ltd. ..Defendant.

Mr.V.M.Mahajan i/b Divekar & Co. for plaintiff.

Mr.Prashant Chandu a/w Ms.Sanaya Dada C. i/b. M.K.Ambalal & Co. for defendant.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 19, 2007.

P.C. :

1. This Chamber Summons has been filed by the Defendant amongst others to assert that the suit filed by the Plaintiff for recovery of damages is barred by law of Limitation, which is the main relief claimed in the present Chamber Summons. Prayer clause(b) is the incidental relief. This Chamber Summons has been filed in March, 2006, but has been placed for hearing only today pursuant to order dated 9th July, 2007.

2. So far as the plea that the suit is barred by law of Limitation, that is founded on the argument that going by the assertion made in the plaint, it is

more than clear that it is common ground that cause of action for instituting suit had occurred for the first time in September-October, 1977 and in any case in March, 1978 atleast in respect of the two contracts and June, 1978 in respect of third contract.

3. In so far as first contract is concerned, which is G/471, the same is of March, 1977. The Plaintiff sent intimation about shipment of the goods to the Defendant on 9th June, 8th July, 9th July, 15th July, 1977. The goods referable to the said contract arrived in Mumbai sometime between September and October, 1977. Relying on this fact, it is asserted that in the context of Article 55 of the Limitation Act, it should be assumed that the Defendant refused to take delivery of the said goods and for which reason, limitation would start running from September/October, 1977 itself. In any case, the limitation would start running atleast from the date when the legal notice was served by the Plaintiff on the Defendant dated 22nd/27th March, 1978; whereas, the suit has been instituted on 14th April, 1981. Almost similar position obtains with regard to the contract No.2, which is G-664 dated 12th May, 1977. The goods under the said contract

were shipped in June-July, 1977. It is the case of the Defendant that the Plaintiff called upon the Defendant to take delivery of the said goods under letter dated 11th August, 1977, 19th August, 1977. The said goods arrived in Mumbai between September to October, 1977. As the Defendant did not take delivery of the said goods, legal notice was given on 22nd/27th March, 1978, but the suit was filed on 14th April, 1981.

4. In so far as third contract G/402 is concerned, the position is some what different. The same is dated 17th March, 1977. The goods referable to the said contract were shipped between May to July, 1977. The same arrived in Mumbai between September and October, 1977. However, the legal notice was given by the Plaintiff to the Defendant dated 12th June, 1978.

4. The argument of the Defendant proceeds on the assumption that the period for the purpose of reckoning the commencement of limitation period should be taken from September and October, 1977, when the goods arrived in Mumbai under the three different contracts. As the Defendant did not take the delivery of the goods, it ought to be assumed

that the Plaintiff was fully aware that the Defendant was refusing to take delivery. It is submitted that in any case atleast in respect of first two contracts limitation will have to be reckoned from the date of the legal notice given by the Plaintiff on 22nd/27th March, 1978 but the suit has been instituted on 14th April, 1981 which is beyond three years period provided under article 55 of the Limitation Act.

5. Having considered the rival submission, I have no hesitation in rejecting the plea taken on behalf of the Defendant that the issue of suit being barred by law of limitation should be framed as preliminary issue to be decided in the first instance in terms of the provisions of Order 14 Rule 2(2) before proceeding with the recording of evidence. This is so because, it is not possible to countenance the submission that the period of limitation commenced in fact, in October, 1977 itself. That is a matter which raises mixed question of fact and law. In my opinion, refusal cannot be assumed. It is a fact to be asserted and proved. That will have to be done at the trial. This reasoning will apply to all the three contracts in common.

6. In so far as first two contracts are

concerned, I am conscious of the fact that the legal notice sent by the Plaintiff is dated 22nd/27th March, 1978, Whereas the suit has been filed on 14th April, 1981, which is beyond three years period. However, even if that contention of the Defendant was to be accepted, in exercise of powers under Order 14 Rule 2, it is not possible to partly dismiss the suit in relation to the two contracts. That power ought to be exercised if the entire suit was to be dismissed and concluded. In other words, the issue raised by the Defendant can be tested at the trial and answered alongwith the other issues being mixed question of fact and law.

7. In any case, in so far as the third contract is concerned, it is common ground that the legal notice was given by the Plaintiff on 12th June, 1978. If the date of the legal notice is to be reckoned for the purpose of limitation in terms of article 55 of the Limitation Act, it will necessarily follow that the suit filed on 14th April, 1981 is well within limitation. In other words, atleast in respect of 3rd contract the suit will have to proceed in accordance with the law.

8. Suffice it to observe that the opinion

recorded in the earlier part of this decision is for the limited purpose of considering whether to frame the issue of suit being barred by limitation as a preliminary issue; and not final expression of opinion on the merits of the contention of that issue. All relevant aspects in the context of that issue will have to be considered at the appropriate stage while deciding the entire matter alongwith the other issues. In other words, it is not possible to accede to the request of the Defendant as pressed in this Chamber Summons to frame preliminary issue of suit being barred by limitation, to first answer the same before proceeding to record the evidence. According to the Plaintiff entire evidence has been completed. Whereas, according to the Defendant, although the recording of evidence has substantially progressed the same is not enough to answer the issues that may arise for consideration in the suit.

9. Be that as it may, this Chamber Summons is dismissed while observing that the issue of suit being barred by limitation will be considered on its own merits in accordance with the law alongwith other issues. No order as to costs.

(A.M.KHANWILKAR,J)